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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,953	02/22/2002	William J. Hennen	2820-4428.2US	6427

24247 7590 04/21/2008

TRASK BRITT
P.O. BOX 2550
SALT LAKE CITY, UT 84110

EXAMINER	
CHEN, STACY BROWN	
ART UNIT	**PAPER NUMBER**
1648	

NOTIFICATION DATE	DELIVERY MODE
04/21/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTOMail@traskbritt.com

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/081,953	**Applicant(s)** HENNEN ET AL.	
	Examiner Stacy B. Chen	**Art Unit** 1648	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 April 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-16 and 18-23*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Stacy B. Chen/ 4-14-2008

Continuation of Item 7. Claims 1-16 and 19-23 remain rejected under 35 U.S.C. 102(e) as being anticipated by Dopson (PGPub 2002/0044942A1, “Dopson”, published April 18, 2002, with priority to provisional application 60/233,400, filed September 18, 2000). Applicant’s arguments have been carefully. Applicant's arguments are directed to the following:

Applicant argues that Dopson does not qualify as prior art because Dopson's claim to priority is improper. Specifically, Dopson's disclosure fails to reference provisional application 60/233,400 in the first sentence of the specification or on an application data sheet. Applicant asserts that even if this deficiency were cured in the Dopson application, Dopson cannot be considered to be entitled to a priority date until the defect has actually been cured. In response to Applicant’s argument, the oath filed in Dopson’s application references and claims priority to the provisional application, 60/233,400. Although Dopson has not complied with the minor informality of referencing the provisional in the specification or in an ADS, this informality may be corrected at any time. Notably, the claim is in the oath.

The claims of Dopson and the instant invention differ because the instant invention is drawn to a method of inducing an immune response by administering transfer factor, and the method of Dopson is a process of producing transfer factor. Since the pending claims do not interfere with Dopson's claims, Applicant may overcome the rejection of record by filing a 1.131 declaration, as stated in the previous Office action.

Claims 1, 2, 5, 7, 8, 10-13, 16 and 18-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klesius et al. (Poultry Science, 1984, 63:1333-1337, “Klesius”) in view of Rozzo et al. (Molecular Immunology, 1992, 29(2):167-182, "Rozzo"). Claims 3, 4, 6, 9, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klesius et al. (Poultry Science, 1984, 63:1333-1337, “Klesius”) in view of Rozzo et al. (Molecular Immunology, 1992, 29(2):167-182, "Rozzo"), as applied to claims 1 and 7 above, and further in view of Kirkpatrick (US Patent 5,840,700).

Applicant argues that the references of record in the obviousness rejections do not disclose administering a quantity of a composition comprising an egg extract. In response to this argument, the claims require the administration of an egg extract. The egg extract that Apfplicant refers to encompasses transfer factor that has been purified from other proteins or peptides having molecular weights of greater than about 8 kDa. The references of record meet this limitation because Klesius and Rozzo disclose transfer factor, and Rozzo discloses the desired purity. The origin of the instantly claimed transfer factor does not render the transfer factor itself different from transfer factor derived from chicken spleenic leukocytes. Transfer factor, in the instant method claims, is referred to as a product-by-process. The Office's position is that the methods of inducing an immune response with transfer factor are either known/obvious, and that the use of transfer factor from chicken eggs or spleen leukocytes does not render the instant methods patentably distinct from those of the prior art because the product being used is expected to be the same.

/Stacy B. Chen/ 4-14-2008
Primary Examiner, Art Unit 1648